



POLICE DEPARTMENT

October 4, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Charles Cavallaro
Tax Registry No. 938197
24 Precinct
Disciplinary Case No. 2010-2668

The above-named member of the Department appeared before me on June 3, 2011, charged with the following:

1. Said Police Officer Charles Cavallaro, while assigned to Narcotics Borough Bronx, or about and between March 21, 2009 and August 12, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that on eight (8) occasions, said Police Officer caused reports to be filed with the Department that contained inaccuracies and factually incorrect information regarding investigative work, and did not have corroborating documentation to prove that this investigatory work occurred.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

2. Said Police Officer Charles Cavallaro, while assigned to Narcotics Borough Bronx, or about and between March 21, 2009 and August 12, 2009, while on-duty, made incomplete, incorrect and improper entries in his Department issued memobook.

P.G. 212-08, Pages 1 & 2, Paragraphs 1 & 2 ACTIVITY LOGS

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Guilty to the subject charges. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

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DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

After performing Operation Impact duties at the 40 Precinct, and patrol and anti-crime duties at the 45 Precinct, in January, 2009, Respondent was assigned to the Narcotics Division. He was told that if he performed investigative duties within the Narcotics Division for 18 months he would be promoted to detective. He attended a two week narcotics enforcement training course before being assigned to Narcotics Borough Bronx where he worked on a “buy and bust” team for about 22 months.

During the period between March 21, 2009 and August 12, 2009, Respondent was assigned to KITE investigations within Narcotics Borough Bronx. An internal investigation that was conducted regarding the workload of his unit resulted in the discovery of inaccuracies in certain paperwork he had prepared. This paperwork showed that on eight occasions he “either didn’t sign out on time to complete an observation that I put the time down as or on two occasions I did one at the exact same time.” Respondent explained that these inaccuracies were in part the result of the fact that he was new to the Narcotics Division and that narcotics paperwork was completely different from patrol and anti crime paperwork.

Respondent also attributed some of the inaccuracies in the paperwork he prepared to the fact that sometimes when he and his partner were assigned to do observations they would leave the command to take their observation post prior to the time when the rest of the members of the team left the command, but that the team “supervisor would sign us

all out on the movement slip” as if the entire team had left the command together at the same time.

Respondent further explained that because he was “carrying” as many as 15 different investigations during the period between March 21, 2009 and August 12, 2009, he was sometimes unable to sit down and prepare his observation reports until five days had passed from the date that the observations had been conducted and that his attempt to memorialize events so long after their occurrence caused him to make errors regarding what time an event took place. None of his inaccuracies involved anything other than where he was present at a certain time. Respondent stated that the fact that he had made incomplete entries in his Activity Log during the period between March 21, 2009 and August 12, 2009, was “just a lack of effort on my part,” and that he was “totally guilty” of failing to make complete entries in his Activity Log.

Although he was assigned to Narcotics Borough Bronx for about 22 months, Respondent was not promoted to detective and he was never told why he was not being promoted. On November 4, 2010, he was transferred to the 24 Precinct, the command to which he is presently assigned. While performing patrol duties there he has made about 30 arrests.

On cross-examination, Respondent confirmed that during his narcotics enforcement training he was instructed about the paperwork requirements for KITE investigations. Respondent also confirmed that he had prepared two reports which, when compared to each other, showed that he had conducted observations at two different locations on the same date during the same period of time which, Respondent agreed, was an impossibility. Respondent further agreed that the fact that he had made incomplete

entries in his Activity Log regarding these two observations made it impossible for him to determine from his own Activity Log entries which of the two locations he had actually been present at during the period of time denoted on the two reports.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y. 2d 222 (1974). Respondent was appointed on July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Assistant Department Advocate (the Advocate) stated that the Department does not dispute that during the time period relating to these charges, Respondent had a heavy workload and that as a result of this heavy workload he was unable to prepare his reports until several days after the date that the activities detailed in these reports had taken place. The Advocate also stated that the Department does not dispute the fact that many of his errors were typographical errors. Finally, the Advocate confirmed that none of his inaccuracies pertained to arrest paperwork, warrant paperwork, or any paperwork that lead to the dismissal of any criminal cases.

Nonetheless, the Advocate recommended that Respondent forfeit 20 vacation days as a penalty. The Advocate cited two disciplinary decisions to support her penalty recommendation. However, the circumstances presented in those two cases are different from the circumstances presented here. The Advocate cited *Case No. 82975/07* (signed on August 19, 2008), where a 13-year police officer forfeited 17 vacation days after he

pleaded guilty to charges of repeatedly failing to sign out of his command and failing to maintain his Activity Log. However, in that case, unlike here, the police officer had three prior disciplinary adjudications including two cases (which were disposed of together) which resulted in a penalty of the loss of 30 days and the imposition of a one year period of dismissal probation.

The Advocate also cited *Case No. 85574/09* (signed on June 8, 2010), where a two-year police officer forfeited 20 vacation days after he pleaded guilty to signing and filing a Criminal Court complaint which he knew contained inaccurate information. However, in that case, unlike here, since the police officer swore in the complaint that he had spoken to a complainant he knew he had never spoken to, his inaccurate statement was knowingly made and it was contained in arrest paperwork which could have resulted in the dismissal of a criminal case.

I believe that the following three disciplinary decisions should be taken into consideration with regard to determining the appropriate penalty to be imposed on Respondent here.

In *Case No. 83233/07* (signed on November 25, 2008), a 23-year lieutenant with one prior disciplinary adjudication forfeited eight vacation days after pleading guilty to neglecting to make Command Log entries documenting the reassignment of an arrest, failing to make the appropriate entries in the Activity Log of the officer to which the arrest was assigned, and failing to make sure that a vehicle had been properly vouchered, while the lieutenant was assigned as the desk officer.

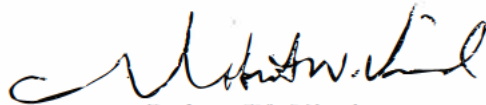
In *Case No. 84684/08* (signed on April 20, 2010), a two-year police officer with no prior disciplinary record forfeited ten vacation days after a mitigation hearing for

indicating on Department records that he was the arresting officer on a marijuana case and that he had observed the perpetrator in possession of a lit marijuana cigarette, when in fact he had not been present at the scene, thereby causing two inaccurate instruments to be filed with Criminal Court.

Finally, in *Case No. 85957/09* (signed on July 1, 2010), a 13-year sergeant with no prior disciplinary record forfeited ten vacation days after he pleaded guilty to making alterations to his Activity Log that he had verified an arrest and performed administrative duties on a certain date when, in fact, the entries were not made until more than a year after these events.

Having examined the facts and circumstances surrounding the Respondent's misconduct, I recommend that the Respondent forfeit ten vacation days.

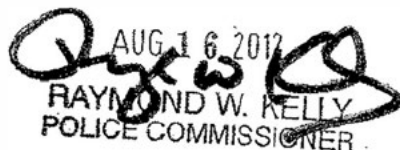
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner - Trials

APPROVED



AUG 16 2012
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHARLES CAVALLARO
TAX REGISTRY NO. 938197
DISCIPLINARY CASE NO. 2010-2668

The Respondent received an overall rating of 3.5 on his 2010 performance evaluation, 4.5 on his 2009 evaluation, and 4.5 on his 2008 evaluation. He has no medals. [REDACTED]. He has no prior formal disciplinary record.

On August 26, 2010, he was placed on Level I Force Monitoring for having received three or more CCRB complaints in one year.

For your consideration.

A handwritten signature in black ink, appearing to read 'Robert W. Vinal', is written over a horizontal line.

Robert W. Vinal
Assistant Deputy Commissioner – Trials